

National Rural Water Association

Code of Business Ethics and Conduct

The regulations governing contracting with Government entities, either directly or as a subcontractor or supplier, and relations with Government employees, can be complex. Those regulations are strictly enforced. Although a general summary is provided below, if you are involved in Government contracting and need further guidance on any matter, please request further information from your supervisor. National Rural Water Association (NRWA) provides its employees with a wide variety of resources to help comply with the rules. Compliance is everyone's responsibility. Remember: If you see something, say (or ask) something!

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Section 1. Definitions.

“**The Company**” refers to National Rural Water Association (NRWA) and State Affiliates.

“**Contracting Officer**” means the Government representative with the authority to enter into, administer, or terminate contracts and make related determinations and findings.

“**Government**” refers to United States Federal, State, and Local Governmental entities. The definition also includes quasi-Governmental entities, including but not limited to Government corporations, the United States Postal Service, regional transportation or other authorities, etc. **NRWA services provided through other contractors (for example, providing services to a prime contractor under the prime contractor’s agreement with the Government) are also considered Government Contracts, even when NRWA may be several levels below the prime contractor.**

“**Government Contract**” is a contract, grant, or other transaction where the **ultimate end user** of the goods or services being procured is the Government.

“**Government Employee**” is any individual employed directly by a Government entity as well as any individual contracted to perform procurement functions on behalf of a Government entity.

“**State Affiliate**” is an organization that provides NRWA funded services in their State. Due to the direct relationship with NRWA, some activities of a State Affiliate may be covered by this policy.

Section 2. Bid Pricing and Proposals.

NRWA will not discuss, disclose to, or otherwise coordinate Government Contract pricing with any other company, particularly when competing for a contract. The only exception to this rule is when NRWA is part of a team, such as a prime contractor/subcontractor relationship, a joint venture, etc. In those situations, NRWA can discuss prices with other team members under an appropriate Non-Disclosure Agreement. If NRWA is participating in more than one team, it may not discuss pricing for one team with members of another team.

Example: NRWA may never arrange with another organization that “we will bid high so you get this job, and you bid high so we get the next one” or any similar arrangement.

Section 3. Gifts and Gratuities.

NRWA employees may not offer **anything of value** to Government Employees, whether or not anything is expected in return. This includes meals, discounts, gifts, tickets, entertainment, travel, employment or consulting opportunities, merchandise, or anything else. This prohibition extends to things of nominal value; for example, a NRWA employee and a Government Employee should get separate checks at a coffee shop.

Gifts, gratuities, favors, entertainment, etc., bestowed upon members of the immediate families of Government Employees are also strictly prohibited. In the event that this policy conflicts with any

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other NRWA policies, this policy shall control as to Government Contract-related entities and transactions.

Personal friendship is **not** an exception to the rules in this Code. Giving anything of value to a Government Employee, even in the context of a relationship that pre-dates a personal relationship, is prohibited. For purposes of this Code, the key point is that the individual receiving something is a Government Employee, not the nature of the relationship with the NRWA employee.

Promotional items of little intrinsic value such as a coffee mug, calendar, greeting cards, plaques, certificates, trophies, or similar items intended for the purpose of presentation and displaying the Company logo are permissible. Items such as soft drinks, coffee and donuts at hosted meetings are allowed. However, if lunch or other meals are served, Government employees are expected to pay the fair value of the meal.

Example: The NRWA logo on an expensive leather jacket results in an expensive, and prohibited, gift, not an allowable promotional item.

At industry events (trade shows, conventions, meetings), items of value cannot be given to Government Employees, even if they are also being provided to the public at large. This includes hospitality suites, product or prize giveaways, etc.

Example: In particular, alcohol being served in a hospitality suite or customer dinner requires those individuals defined as “Government” Employees (as discussed in Section 1) to be charged the fair market value of what they receive.

These rules apply whether or not the NRWA employee submits a reimbursement request for the thing of value given to a Government Employee. Giving things of value that are paid for personally by a NRWA employee, or that are personally owned by the NRWA employee, is still prohibited.

In some instances, the offer of employment, even if conditional or general in nature, qualifies as an offer of “something of value.” Please review the section on potential hiring of former government employees for more detail.

Section 4. Organizational Conflicts of Interest (“OCI”).

An OCI is a situation where something NRWA does on one contract gives NRWA an unfair advantage competing for another contract. In some instances, informal or “off the books” work NRWA did even without a contract could create that unfair advantage. There are many possible examples of OCI; the descriptions below are not exhaustive.

The most common type of OCI involves writing specifications or evaluation factors that favor NRWA. For example, if NRWA is requested to draft specifications or evaluation factors (or something similar) and the Government uses those specifications in a future contract, NRWA may be prohibited from bidding on the contract to supply the product specified.

Example: A Government Employee (as broadly defined in this Code) asks a contact at NRWA for “some specs I can use in putting together an RFP on technical assistance

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services to rural water systems”. Providing those specifications can create an OCI. However, if the Government Employee is widely circulating the request for specifications or other information, then providing them does not create an OCI.

If the Government broadly asks industry, or the public, for input, NRWA responses are **not** a potential OCI situation. OCI situations arise from one-on-one or non-public communications.

OCIs can also be created by work done by subcontractors and by individual employees (either while employed by NRWA, State Affiliates, or employed by a previous Government or commercial employer).

OCI's can also occur with NRWA State Affiliates. For example, if employees from a State Affiliate assists the Government with drafting a Statement of Work, an OCI could occur if NRWA bids on the resulting contract.

Screening for OCIs is an ongoing issue. If you have any question whether an OCI is present or not, consult your supervisor.

Section 5. Interactions with Government Employees.

The regulations governing United States Government contracting and relations with Government Employees are complex and strictly enforced. Prohibited conduct includes:

(1) Soliciting, obtaining, or disclosing Government source selection information, or a competing contractor's proprietary bid or proposal information.

This means that NRWA may not receive access to, or information about, any part of a procurement, except as officially provided to NRWA by the Government or the company NRWA is contracting with on the Government project. Usually that means information that has been made public, or information that is provided to all contractors, such as comments by the Government on individual contractor proposals or published questions and answers. **Generally, if NRWA is in a competitive bidding situation, regardless of whether or not NRWA is the prime contractor, these rules apply.**

Example: NRWA, but not other potential bidders, is given an “unofficial” or “draft” copy of a Government RFP in advance, so “you can put together a better bid.” That violates rules on procurement information, even if NRWA didn't ask for the materials.

NRWA employees should not attempt to obtain, or accept, or keep, non-public information from any source, even if not solicited and/or delivered anonymously. Prohibited information includes information about competitors, including pricing, specifications, product offerings, etc., as well as non-public Government information. The fact that information may or may not have some type of confidentiality legend does not affect this prohibition. If information (other than that officially provided by the Government as part of the procurement process or otherwise clearly public) either about the procurement process or about competitors is offered to NRWA or found to be in NRWA's possession, contact the COO or CEO immediately.

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Compliance Note: “Informal”, “off-line” or “out of school” transmission of information is often a sign that the information should not have been provided. Resolve any doubts by contacting the COO or CEO.

(2) Discussing future employment with or making an offer or promise of future employment to, a Government procurement official, or to hiring a former Government procurement official, except as authorized in advance by the General Counsel.

Government agencies have different policies regarding contractors hiring former Government personnel. Many of those regulations are also impacted by former and “new” job titles and responsibilities, contract values, and other factors. In some cases, there may be a lifetime prohibition against former Government personnel working for contractors on particular programs; in other cases, the prohibition may be for a shorter length of time.

Compliance Note: Even if the former Government Employee has been away from a particular project for several years, he/she still needs to be screened according to these rules.

All new NRWA hires who may be involved in Government Contracts must indicate, prior to being hired, whether they ever worked for the Government. If the new hire responds in the affirmative, the individual must provide details, including particular agencies, involvement in Government Contracts, and any post-employment restrictions of which he/she is aware.

Compliance Note: If new hires have worked for the Government within the past 10 years, those new hires are encouraged to obtain written guidance from the Ethics Office (or equivalent) at their former Government employer regarding any post-employment restrictions.

The CEO must approve the hiring and assignment within NRWA of any new employee with a Government background as described above. Human Resources should also mark the new employee’s personnel file to indicate that similar approval is required for changes in status or assignment. This requirement is designed to ensure that a former Government employee is not hired for an “acceptable” NRWA position, but then later moved to a position where he or she is improperly working on matters relating to his or her former Government program.

Example: Casually saying to a Government Employee something like “...it would be great if we could work together after this project is finished” can (and has been) interpreted as offering that Government Employee a job, which could violate both the Gifts and Gratuities rules and the rules surrounding post-Government employment.

The law requires that each employee involved in Government Contracts certify that he or she is familiar with the Federal Procurement Policy Act, will comply with the Act, and will report all violations of the Act. Appendix A is a form of Certification to be used by NRWA employees; each NRWA employee engaged directly in Government Contracts will sign a Certification, which will be placed in the employee’s Human Resources personnel file.

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Section 6. Lobbying

Any lobbying activity targeted at winning a Government Contract, including lobbying regarding Government programs being authorized or funded, must be approved **in advance** by the CEO. “Lobbying” is different than sales or marketing activities, which focus on Government procurement or user activities. Lobbying attempts to persuade Legislative or Executive Branch personnel to influence procurement decisions for a particular contract.

Example: Lobbying Congress or a State agency in support of a robust infrastructure program is acceptable; lobbying for the award of Contract XYZ-123456 to NRWA is not, unless specific steps are taken, in advance, by the Company.

Section 7. Contract Administration.

7.1 Authority to Contract.

All contracts, including Government Contracts, are governed by strict rules limiting the individuals with authority to bind the Government. The same types of rules apply when NRWA is providing services to another contractor, whether or not as part of a Government project. On direct Government Contracts, the Government employee with the title “Contracting Officer” is generally the only individual authorized to bind the United States Government. Responsible NRWA contracting employees must ensure that NRWA is contracting with, and receiving direction from, only those individuals authorized to bind a Government customer. The title for the employee of the higher-tier contractor NRWA is providing services to should be specified in the contract, PO, or other contract document.

Example: Acting upon direction or instructions from unauthorized personnel may create a situation where NRWA will not be paid for work performed, or where NRWA could be held to have violated a regulation or contract provision without proper authorization. For example, a Government Quality Assurance Inspector generally has the authority to reject a deliverable but may lack authority to direct NRWA to modify a specification or a delivery date. Check with your supervisor or the COO or CEO with any questions.

Example: The Government Contracting Officer says “I don’t have time to write up a Buy American Act waiver; just go ahead and certify compliance, even though you don’t have an American product to offer.” The Contracting Officer **does not** have authority to authorize NRWA to break the law, even though the “Government” knew the true situation.

7.2 Change Orders.

Generally, Government Contracts contain a “Changes” clause that allows the Contracting Officer to make bi-lateral and in some cases unilateral changes, in designated areas, within the general scope of the Government Contract, by issuing written change orders (“Change Orders” or “Modifications”). Except in unusual circumstances, all Government Contract Change Orders issued to NRWA must be in writing or be followed up and memorialized in writing as soon as possible after receipt of verbal directions or instructions. Verbal Change Orders must be approved, prior to work commencing, by a NRWA employee authorized to execute the contract.

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7.3 Supply or Subcontract Agreements.

When working as a subcontractor in support of a Government Contract, NRWA is bound by the terms of the applicable subcontract. If any of those terms conflict with this Code or other NRWA policies, contact the CEO.

NRWA enters into subcontracts and vendor agreements in support of Government Contracts based on merit and does not accept kickbacks in any form, including contingency fees, gratuities, commissions, rebates, or discounts that are made for the purpose of improperly obtaining or rewarding favorable treatment in connection with any Government Contract.

NRWA must impose upon, or flow down to, its State Affiliates, subcontractors and vendors certain Government clauses or other terms and conditions, including requirements largely mirroring this Code of Business Conduct. NRWA requires that all third-party agreements in support of Government Contracts contain provisions satisfactory to NRWA requiring compliance with government contracting laws and regulations.

NRWA may rely upon representations, certifications, or statements of State Affiliates, subcontractors and suppliers, as long as NRWA has no reasonable basis to doubt the subcontractor's knowledge or accuracy.

Example: NRWA asks a State Affiliate if it complies with a particular Government specification or contract requirement. The State Affiliate replies: "sure we do; what's that?" In that situation, NRWA has an obligation to do further due diligence before relying on the State Affiliate's assurances.

Section 8. Accounting and Audit Requests.

NRWA's credibility is judged in many ways – one fundamental way is the integrity of its books, records, and accounting. Mischarging on Government Contracts is a violation of regulations, federal criminal law, and NRWA policy. Since invoicing practices may differ across organizations, your supervisor should provide information on authorized billing and clarify the billing procedures that apply to you. If you need additional information or are concerned about errors or misunderstandings, please contact the COO or CFO.

In addition, employees must notify the COO or CFO of all audit requests related to Government Contracts, whether by the Government or a higher-tier contractor.

Section 9. Document and Records Management.

Records and information can exist in many forms, such as documents, files, graphs, and databases, and may be in hard copy or electronic form. **For all Government Contracts, NRWA will retain all contract documents generated from proposal entry to contract closeout for the duration of performance and indefinitely thereafter.** For more information please consult the COO or CFO.

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Section 10. Representations, Warranties, and Certifications.

All information provided to the Government, including representations, certifications, warranties, invoices, requests for payment, statements of compliance with specifications, and other statements of fact, is subject to broad requirements of honesty and accuracy. All communications and information provided to the Government, whether written, oral, or electronic, must be factually accurate. Estimates and opinions must be identified as such. **Even if a Government request for communication does not carry an “under penalty of perjury” or similar label, it may be a criminal offense or subject NRWA to civil penalties to make such a communication with knowledge that the communication is false or inaccurate or made with a “reckless disregard” for accuracy.**

This provision also applies to information supplied to another contractor that an employee knows, or should know, will be provided to the Government, or incorporated into other information to be provided to the Government. Direct any questions about the status of such a communication to the COO.

Example: NRWA sends an email to another contractor that a particular NRWA service meets “Technical Spec XYZ-123.” On that basis, the NRWA service is included in the bid submitted to another contractor, that in turn includes the bid in a further bid submitted to a Government Agency. NRWA’s original email to the first company is considered a certification to the Government.

Section 11. Small Business Laws.

Some Government Contracts may require NRWA to file a “small business subcontracting plan.” This plan sets percentage goals for NRWA’s subcontracting efforts with small businesses, and in some cases minority-owned and/or disadvantaged businesses. If a Government Customer imposes such a requirement on NRWA, refer the matter to the COO or CFO. Failure to follow a plan already submitted may subject NRWA to monetary and other penalties.

Various Government Contracts may be set aside for “small businesses,,” or other categories of contractors (minority-owned, disadvantaged, veteran-owned, etc.). Others may exempt a contractor from various requirements if the contractor is a “small business.” **NRWA does not qualify as a prime contractor for any type of set-aside contract program.**

Extra care must be taken when NRWA is a subcontractor to a business that has been awarded a Government Contract under a small business or disadvantaged business preference program or other set-aside. It is particularly important that all such subcontracts be at arms-length, and that NRWA may not have an unusual degree of involvement in the prime contractor’s business affairs.

It is possible, on a set-aside contract, that the relationship between NRWA as the subcontractor and a small business prime contractor creates legal “affiliation” between the two firms, making the prime contractor ineligible for the contract. In the event a government solicitation is designated as “set-aside,” whether for small business, Disadvantaged Business Enterprise, or a similar designation, counsel must be consulted PRIOR to any bid, proposal, or quote is submitted.

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Section 12. Combating Trafficking in Persons.

The United States Government has adopted a zero-tolerance policy regarding trafficking in persons. NRWA, its employees, State Affiliates and subcontractors may not engage in trafficking in persons, procure commercial sex acts (defined as any sex act on account of which anything of value is given to or received by any person), or use forced labor. This policy applies both to actions performed while on the job and to after-hours activities. Violation of this policy will result in action against the employee that may include, but may not necessarily be limited to, reduction in benefits, termination of employment or reassignment. If you have any questions, concerns, or knowledge of violations of this zero-tolerance policy, notify the COO.

Section 13. Drug-Free Workplace.

NRWA’s policies and federal and state laws, including the Drug-Free Workplace Act, prohibit the illegal manufacture, use, possession, distribution, dispensing, transportation, purchase or transfer of controlled substances or drugs by employees in the workplace, in NRWA vehicles, and while conducting NRWA business.

Under the Drug-Free Workplace Act, NRWA employees are required to notify the Company within five days of a conviction under a criminal drug statute for a violation occurring in the workplace. NRWA must report such violations to the federal government.

Section 14. Intellectual Property

In most fixed price Government contracts, NRWA will be delivering commercial services. In those situations, NRWA may provide intellectual property to its Government Customers. If the Government Contract contains a requirement for the delivery of intellectual property, including “technical data” or requires any research or development work that is funded, in whole or in part, directly or indirectly, with Government funds, contact the COO.

In addition, contact the COO if any software is being provided under a Government Contract with anything other than NRWA’s standard commercial software license.

The Government will usually not enter into non-disclosure agreements. Any confidential or proprietary information transmitted to the Government as part of the contracting process should be labeled as “confidential” and be assumed to be at risk. Government statements that it will not release the information, and protective legends, will significantly reduce that risk.

If NRWA receives notice that its information in the Government’s possession has been requested pursuant to the Freedom of Information Act (“FOIA”), and NRWA wishes the information to remain within the Government, consult the CEO prior to responding to the Government notice.

Section 15. Cybersecurity

Government contracts contain strict, and constantly evolving, cybersecurity requirements. Every contract solicitation should be reviewed upon receipt by the COO to determine if NRWA complies

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with the cybersecurity requirements, or, if it does not, how and when it will achieve compliance. In the event of a cybersecurity incident, notify the COO immediately.

Section 16. Miscellaneous Compliance Policies.

16.1 Termination.

Any termination for default on a Government Contract must be reported to the CEO as soon as possible, along with a description of any reasons for believing that the stated grounds of termination may be incorrect or that the termination is otherwise not the fault of NRWA.

16.2 Protests.

If you receive notice that any contract or award for which NRWA is competing or has been awarded is the subject of a protest, notify the COO immediately. Likewise, no bid protest may be initiated without the approval of the COO. If NRWA loses a competition for a Government Contract, protest options are very time-dependent, so contract the COO immediately upon notification.

16.3 Work in Advance of Contract Award.

Generally, work done in advance of a contract award is “at risk.” If the Government does not ultimately award a contract, NRWA will not be paid, regardless of the promises made by Government Employees.

16.4 Past Performance Ratings

The Government issues past performance ratings on every Government contract. These are normally placed in the Contractor Performance Assessment Rating System (“CPARS”). These ratings are important (and usually scored) factors in future contract awards. NRWA COO, CEO and Program Director will monitor NRWA’s ratings. If NRWA receives a rating lower than it believes it deserves, there is a short window to appeal; in the event such a rating is received, contact the CEO immediately.

16.5 Notification of Improper Behavior.

If you observe or suspect any improper behavior, or behavior that violates this Government Contracting Code of Business Ethics and Conduct, you must immediately notify the hotline at (844) 974-5083. The hotline is a confidential number for reporting any potential violations of laws, regulations, policies or procedures on an anonymous basis, if desired. The purpose of this hotline is to ensure the timely identification and resolution of all issues that may adversely affect employees, customers, or the organization. Employees are expected to report problems or concerns anonymously or in confidence via the hotline when they believe a potential violation has taken place. All disclosures will be thoroughly investigated, and no adverse action or retaliation will occur against an individual for bringing a good faith report of a violation or potential violation of this policy to light.

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Government Contracting Code of Business Ethics and Conduct Acknowledgment Form

I confirm that I have read and understand NRWA Government Contracting Code of Business Ethics and Conduct and agree that it is my responsibility to comply with the guidelines contained therein.

Signature _____

Date _____

Print Name _____

Title/Position _____

Location _____

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Federal Procurement Policy Act Certification

The Procurement Integrity Law of the Office of Federal Procurement Policy Act, as amended, requires procurement integrity in Federal government contracts. The Act may be found at 41 U.S.C. 423. I hereby certify that I am familiar with and will comply with the requirement of the Office of Federal Procurement Policy Act as implemented in the Federal Acquisition Regulation and will report immediately to the General Counsel any violation or possible violation of the Act.

During any Federal agency procurement of property or services, I understand that I am prohibited from:

- (1) Making, directly or indirectly, any offer or promise of future employment or business opportunity to, or engaging, directly or indirectly, in any discussion of future employment or business opportunity with any Government procurement official of such agency;
- (2) Offering, giving, or promising to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any Government procurement official of such agency; or
- (3) Soliciting or obtaining, directly or indirectly, from any officer or employee of such agency, prior to the award of a contract, any proprietary or source selection information regarding such procurement.

“Proprietary” material could be information submitted by a competitor for a government contract; sometimes it is marked “proprietary.” It could relate to cost or pricing data or other information owned by the competing company. “Source selection material” is typically marked by the contracting agency, but could include unmarked information, the disclosure of which would jeopardize the integrity of the procurement. Such items may include, without limitation, competitor pricing information, technical evaluations, rankings, etc.

I have signed this certification this ____ day of _____, 20__.

(Name)

(Title)